

6-186AC69
Date JUL 14 1976
Fee \$ 60-
ICC Washington, D. C.

ROPES & GRAY
225 FRANKLIN STREET
BOSTON 02110

AREA CODE 617 423-6100

July 12, 1976

Interstate Commerce Commission
Washington, D. C. 20423

RECORDATION NO. 8394 A, B, C + D
Filed & Recorded

Attention: Mrs. Mildred Lee

JUL 14 1976 -3 25 PM

Re: Pickens Railroad Company

INTERSTATE COMMERCE COMMISSION

Dear Mrs. Lee:

As you requested in our telephone conversation today,
I enclose a check in payment of filing fees relating to
documents numbered 8394, 8394a, 8394b, 8394c and 8394d.
Your cooperation in this matter is greatly appreciated.

Very truly yours,

William F. McCarthy
William F. McCarthy

WFM:sf
Enclosure

INTERSTATE
COMMERCE COMMISSION
RECEIVED

CA JUL 14 1976

ADMINISTRATIVE SERVICES
MAIL UNIT

RECORDATION NO. 8394-C Filed & Recorded

JUL 1 1976 9 40 AM

INTERSTATE COMMERCE COMMISSION

GENERAL DISCOUNT CORPORATION

COMMERCIAL FINANCE

RECORDATION NO. 8394 Filed & Recorded

JUL 1 1976 9 40 AM

INTERSTATE COMMERCE COMMISSION

JUL 1 1976 9 40 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 8394-A Filed & Recorded

JUL 1 1976 9 40 AM

RECORDATION NO. 8394-A Filed & Recorded

INTERSTATE COMMERCE COMMISSION

JUL 1 1976 9 40 AM

INTERSTATE COMMERCE COMMISSION

June 29, 1976

RECORDATION NO. 8394-B Filed & Recorded

JUL 1 1976 9 40 AM

INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Fee \$ 50

Re: Pickens Railroad Company

CC Washington, D. C

Dear Sir:

1. Pursuant to Title 49, Code of Federal Regulations, Part 1116, General Discount Corporation encloses for filing the original and two certified copies of the following documents:

- (a) Agreement dated June 30, 1976 between Pickens Railroad Company ("Pickens"), National Railway Utilization Corporation ("NRUC"), Metal Fabricators, Inc. ("MFI") and General Discount Corporation ("GDC");
- (b) *Assignment* Agreement dated as of June 30, 1976 between North Carolina National Bank ("NCNB") and GDC under which NCNB assigned to GDC its rights as Vendor under a certain Conditional Sale Agreement between MFI, NRUC and Pickens dated as of December 1, 1974 (the "Conditional Sale Agreement");
- (c) Amendment Agreement dated as of June 30, 1976 between Pickens and GDC as Vendor under the Conditional Sale Agreement amending certain provisions of that Conditional Sale Agreement;
- (d) Guaranty dated as of June 30, 1976 by which NRUC guarantees all obligations of Pickens to GDC; and

Counterpart
Michael J. Conrad

June 29, 1976

- (e) Termination of Security Interest by First Security State Bank relating to Security Agreement between Pickens and said Bank as Trustee for Itel Leasing International, Inc. dated March 15, 1975. 8394-2

2. Information concerning these transactions required to be included in this letter of transmittal pursuant to 49 C.F.R. Section 1116.4 is as follows:

(a) Names and Addresses of Parties to the Transaction described in 1(a) above:

- (1) Conditional Vendee: Pickens Railroad Company
402 Cedar Rock Street
Pickens, South Carolina 29671
- (2) Prospective Conditional Vendor: General Discount Corporation
100 State Street
Boston, Mass. 02109
- (3) Builder/Guarantor: National Railway Utilization Corporation
P. O. Box 1946
Greenville, South Carolina 29602
- (4) Conditional Vendor/Guarantor: Metal Fabricators, Inc.
P. O. Box 1946
Greenville, South Carolina 29602

(b) Names and Addresses of Parties to the Transaction described in 1(b) above:

- (1) Assignor: North Carolina National Bank
One NCNB Plaza
Charlotte, North Carolina
- (2) Assignee: General Discount Corporation
100 State Street
Boston, Mass. 02109

(c) Names and Addresses of Parties to the Transaction described in 1(c) above:

June 29, 1976

(1) Conditional
Vendee: Pickens Railroad Company
402 Cedar Rock Street
P. O. Box 216
Pickens, South Carolina 29671

(2) Conditional
Vendor: General Discount Cor-
poration
100 State Street
Boston, Mass. 02109

(d) Names and Addresses of Parties to the
Transactions described in 1(d) above:

(1) Guarantor: National Railway Utiliza-
tion Corporation
P. O. Box 1946
Greenville, South Carolina 29602

(2) Obligee: General Discount Cor-
poration
100 State Street
Boston, Mass. 02109

(e) Names and Addresses of Parties to the
Transaction described in 1(e) above:

(1) Secured Party: First Security State Bank
as Trustee for Itel
Leasing International, Inc.
P. O. Box 1289
Salt Lake City, Utah 84110

(2) Debtor: Pickens Railroad Company
402 Cedar Rock Street
P. O. Box 216
Pickens, South Carolina 29671

(f) General Description of the Equipment
Covered by the Agreements described in
1(a) through 1(e) above:-

The equipment is seventy-two (72) seventy-
ton railroad freight cars bearing (i) the
consecutive serial numbers 55128 through
55199, inclusive, as designated by Pickens
Railroad Company, and (ii) the marking
"General Discount Corporation, Conditional
Vendor.";

Secretary -- 4

June 29, 1976

(g) The following prior recordings are related to the documents described in 1. above and enclosed:

- (1) Conditional Sale Agreement, Recordation No. 7737 at 10:15 a.m. on December 10, 1974;
- (2) Agreement and Assignment between MFI and NCNB, Recordation No. 7737-A at 10:15 a.m. on December 10, 1974; and
- (3) Security Agreement between Pickens and First Security State Bank as Trustee for IteI Leasing International, Inc., Recordation No. 7945-B at 3:25 p.m. on June 5, 1975.

3. The original of each of the documents enclosed should be returned to:

William F. McCarthy
Ropes & Gray
225 Franklin Street
Boston, Mass. 02110

Having knowledge of the matters set forth herein,



Lawrence R. Seder
President
General Discount Corporation

Amendment Agreement

This Agreement entered this thirtieth day of June, 1976 between the following parties to a certain Conditional Sales Agreement dated as of December 1, 1974 (the "CSA") covering seventy-two (72) seventy-ton, fifty foot freight cars designated Serial Numbers 55128 through 55199:

(1) General Discount Corporation ("GDC") as "Vendor" under the CSA by reason of its acquisition simultaneously herewith of the rights of North Carolina National Bank as assignee under a certain Agreement and Assignment dated as of December 1, 1974 between said Bank and Metal Fabricators, Inc.;

(2) National Railway Utilization Corporation ("NRUC") as "Builder" under the CSA; and

(3) Pickens Railroad Company ("Pickens") as "Railroad" under the CSA.

In consideration of the mutual undertakings set forth herein, GDC, NRUC and Pickens hereby agree to amend designated provisions of the CSA as follows:

1. Article 4 of the CSA as it presently reads is hereby deleted in its entirety and the following new Article 4 is hereby substituted therefor:

"ARTICLE 4. PURCHASE PRICE AND PAYMENT. The base price or prices per unit of the Equipment, exclusive of interest, are set forth in Schedule B hereto. The base price of prices, which may include freight charges, if any, from the Builder's plant to the point of delivery, are subject to such increase or decrease as may be agreed to by the Vendor and the Railroad.

Price of all units of the Equipment as finally determined by the Vendor and the Railroad is \$1,807,200.00. As of June 30, 1976, Pickens had paid in respect of such Purchase Price, exclusive of interest and other charges payable under Article 4 as formerly in effect, the sum of \$506,016.00, leaving as of said date a remaining unpaid Purchase Price of \$1,301,184.00.

The Railroad hereby acknowledges itself to be, as of June 30, 1976, indebted to the Vendor hereunder in the amount of, and hereby promises to pay to Vendor in cash at its office in Boston, Massachusetts, the remaining unpaid Purchase Price of the Equipment. Commencing as of July 1, 1976, the remaining unpaid Purchase Price shall bear interest at the rate of 22.9% per annum on the outstanding balance thereof, the aggregate at any time outstanding of said unpaid Purchase Price and interest thereon being referred to as the "Conditional Sale Indebtedness". The Railroad hereby promises to pay the Conditional Sale Indebtedness in eighty-five (85) consecutive monthly installments of \$31,067.57. The first such installment of the Conditional Sale Indebtedness shall be payable on July 1, 1977 and subsequent installments shall be payable monthly thereafter on the first day of each month to and including July 1, 1984.

Interest on the unpaid Purchase Price hereunder as included in the installments in respect of the Conditional Sale Indebtedness has been calculated on the basis of a 360-day year consisting of twelve (12) thirty-day months and on a direct reduction basis.

The Vendor may, in addition to other remedies hereunder, require payment of a delinquency charge of two per cent (2%) per month of the amount of each installment which remains unpaid more than five (5) days after its due date as set

forth above, to the extent that such charge is not prohibited by applicable law."

2. The last sentence of Article 5 of the CSA is hereby amended to read as follows:

"If any such expenses, taxes, assessments, license fees, charges, fines or penalties shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall immediately reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor and reimbursable by the Railroad shall be secured by and under this Agreement."

3. Article 8 of the CSA as it presently reads is hereby deleted in its entirety and the following new Article 8 is hereby substituted therefor:

"ARTICLE 8. LOST, DESTROYED OR DAMAGED EQUIPMENT; INSURANCE. In the event that any unit of the Equipment shall become worn out, lost, destroyed, irreparably damaged, seized by government or otherwise rendered permanently unfit for use from any cause whatsoever (hereinafter called a Casualty Occurrence) prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Railroad, after it has knowledge of such Casualty Occurrence, shall promptly and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of all units of the Equipment (exclusive of units that suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) shall exceed the greater of \$10,000 or 1% of the unpaid indebtedness in respect of the Purchase Price of the Equipment, the Railroad, within 30 days after it has knowledge of such event, shall

promptly pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment. As of June 30, 1976 no unit of Equipment has become subject to such a Casualty Occurrence.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to ^{23,310.10}~~22,516.44~~ as the number of installment payment dates remaining as of the date payment is made with respect to such Casualty Occurrence to and including July 1, 1984, bears to 85. The Casualty Value of each replacement unit suffering a Casualty Occurrence shall be deemed to be that amount which bears the same ratio to the cost thereof (provided through the application of moneys paid to the Vendor pursuant to the first paragraph of this Article 8) as the number of installment payment dates remaining as of the date payment is made with respect to such Casualty Occurrence to and including July 1, 1984, bears to the number of installment payment dates remaining as of the date of the acquisition of such replacement unit.

Any money paid to the Vendor pursuant to the first paragraph of this Article 8 shall, so long as none of the events of default specified in Article 18 hereof shall have occurred and be continuing, be applied, in whole or in part, as the Railroad may direct in a written instrument signed by any officer and filed with the Vendor in such number of counterparts as may reasonably be requested, to prepay the remaining unpaid Purchase Price of said unit of Equipment or to or toward the cost of a unit or units of standard gauge railroad equipment (other than passenger or work equipment) first put into service no earlier than December 1, 1974, to replace in whole or in part

the unit or units suffering a Casualty Occurrence. In case any such money is applied to prepay the remaining unpaid Purchase Price of said unit or units of Equipment, it shall be so applied, on the installment date next following receipt by the Vendor of such written direction, to reduce the remaining unpaid Purchase Price of the Equipment as of said installment date. In the case of replacement with a unit of Equipment theretofore used in railroad service, the amount to be paid by the Vendor shall not exceed the lesser of the fair value thereof or the original cost thereof less depreciation thereon at a rate not less than 6% per annum, and the Railroad shall pay any additional cost of such unit. The fair value of any replacement unit and the Casualty Value of any unit suffering a Casualty Occurrence shall be determined in accordance with the calculations set forth above.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in the Builder having any liability or obligation with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear from all liens, security interests and other encumbrances and shall be taken initially and shall remain in the name of the Vendor, subject to the provisions hereof, and the Railroad shall promptly execute, acknowledge, deliver, file and record all such documents and do any and all such acts as may be necessary to cause such

replacement units to come under and be subject to this Agreement and to protect the title of the Vendor to such replacement units. All such replacement units shall be warranted in like manner to the Railroad and the Vendor as the units replaced (to the extent such warranties are reasonably applicable).

Whenever the Railroad shall file with the Vendor, pursuant to the foregoing provisions of this Article 8, a written direction to apply money to or toward the cost of a replacement unit of standard gauge railroad equipment, the Railroad shall file therewith:

(1) a certificate of a Vice President or the Controller or other Chief Accounting Officer of the Railroad certifying that such replacement unit is standard gauge railroad equipment (other than passenger or work equipment) first put into service no earlier than December 1, 1974, and has been marked as required by the provisions of this Article 8 and certifying, in the event such replacement unit is new equipment, the cost of such replacement unit and, in the event such replacement unit shall be equipment theretofore used in railroad service, the fair value thereof and the original cost thereof and rate of depreciation taken thereon; and

(2) an opinion of counsel for the Railroad that title to such replacement unit is vested in the Vendor free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement.

So long as none of the events of default specified in Article 18 hereof shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if any officer of the Railroad shall in writing so direct, be invested by Vendor, pending its application as hereinabove provided, in such (a) direct obligations of the United States of America or obligations for which the faith of the United States of America is pledged to provide for the payment of principal and interest or (b) open market commercial paper rated prime or its equivalent by a national credit agency or (c) certificates of deposit of commercial banks in the United States of America having capital and surplus aggregating at least \$20,000,000, in each case maturing not more than one year from the date of such investments (all such investments being hereinafter called Investments), as may be specified in such written direction. Vendor shall be the owner of such Investments, in whatever form, subject only to the terms and conditions hereof. Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest or earned discount received by the Vendor on any Investments shall be held by the Vendor and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses (including brokerage commissions) incurred by the Vendor in connection with the purchase and sale of Investments.

Anything herein to the contrary notwithstanding, if any event of default specified in Article 18 hereof shall have occurred and be continuing, then so long as such event of default shall continue, all money then held by the Vendor pursuant to this Article 8 (including for this purpose Investments and interest and earned discount thereon) shall be applied by the Vendor as if such moneys were received upon the sale of Equipment pursuant to Article 19 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall upon request of the Railroad, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad's vendee, assignee, or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad further agrees to keep the Equipment (i) insured against all risks of physical loss or damage from any cause whatsoever for not less than the aggregate Casualty Value thereof (including for this purpose only installation and other similar costs) and (ii) insured against liability for bodily injury, death, property damage and any consequential liability arising out of or related in any way to the ownership, condition, maintenance, use or operation of such Equipment. The coverage under clause (ii) shall be in an amount not less than one million dollars (\$1,000,000) for each accident in the case of bodily injury or death resulting therefrom and one million dollars (\$1,000,000) for each accident in the case of property damage or other consequential damage as aforesaid. All insurance shall provide coverage against such risks and in such

amounts, shall cover the interest of both the Railroad and the Vendor, or its assignee, as the case may be, shall protect the Railroad and the Vendor or its assignee in respect of risks arising out of the ownership, condition, maintenance, use or operation of such Equipment, shall be with companies and in form satisfactory to the Vendor or its assignee and shall provide that such policy may not be invalidated against Vendor or its assignee because of any violation of a condition or warranty of the policy or application and that it may be altered or cancelled by the insurer only after thirty days' written notice to the Vendor or its assignee and that proceeds thereof resulting from property loss or damage shall be adjusted only with and paid to the Vendor or its assignee. The Railroad shall pay the premiums therefor and deliver evidence of such payment, together with the policies, or duplicates thereof, to the Vendor or its assignee. In case of failure of the Railroad to procure or maintain said insurance as hereinabove specified, the Vendor or its assignee may at its option obtain such insurance, in which event the cost thereof shall be payable to the Vendor or its assignee forthwith and shall be secured by and under this Agreement."

5. Article 9 of the CSA shall be amended by adding thereto the following sentence:

"Any and all additions to any unit of Equipment and any and all parts installed thereon or replacements or repairs made thereto shall be considered accessions to such unit and, without cost of expense to Vendor there shall be immediately vested in Vendor title to such accession."

6. Article 15 of the CS as it presently reads shall be deleted in its entirety and the following new Article 15 substituted therefor:

"ARTICLE 15. RAILROAD'S INDEMNITIES. The Railroad does hereby assume and does hereby agree to indemnify and save the Vendor, its agents, servants and assigns, harmless from, and at Railroad's own expense to defend against, any and all liability, loss, damage, causes of action, suits, claims, judgments, demands or expenses, fees, penalties and interest (including reasonable attorneys' fees) arising from or based upon Vendor's purchase, acquisition and ownership of, and title to, the Equipment or upon the actual or alleged use, possession, maintenance, condition (including without limitation latent and other defects and whether or not discoverable by the Lessor), operation, delivery, transportation, control, loss, damage, destruction, removal, return, repossession, storage, surrender, sale or other disposition of the Equipment or its location; provided, however, that the Vendor shall give the Railroad reasonably prompt written notice of any such claim or demand after the same has been asserted in writing against the Vendor. The Railroad shall give to the Lessor reasonably prompt notice of any litigation arising in connection with the Equipment and the Vendor shall have the option to participate in any such litigation through its attorneys and, if it is dissatisfied with the Railroad's handling thereof, to control the defense in any such action to the extent the Railroad is not otherwise prohibited from relinquishing such control. The Railroad further agrees to reimburse the Vendor forthwith for any and all payments of any type which may be made by the Vendor and for which the Railroad is liable by the terms of this Agreement."

7. Article 17 of the CSA shall be amended so that the first two paragraphs thereof shall be deleted in their entirety and the following two new paragraphs substituted therefor:

"ARTICLE 17. ASSIGNMENTS. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 13 hereof, transfer the right to possession of any unit of the equipment without first obtaining the written consent of the Vendor.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made to the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to any of its warranties and indemnities under Articles 10 and 16 hereof, or relieve the Railroad of any of its obligations to the Vendor under any of the provisions of this Agreement. In the event of any such assignment, the Railroad agrees that it will not assert against any such assignee any claims by way of abatement, defense, set-off, counterclaim, recoupment or otherwise, the Railroad may have by reason of any default of the original vendor or prior assignee under this or any other agreement."

8. Article 18 of the CSA shall be amended as follows:

(1) Clause (b) of Article 18 as it presently reads is hereby deleted in its entirety and the following new clause (b) is hereby substituted therefor:

"(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any other agreement entered into by the Railroad relating to the financing

of the Equipment including, without limitation a certain Revolving Credit Agreement between General Discount Corporation as lender and Railroad dated as of June 30, 1976, on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance or any representation or warranty of the Railroad to the Vendor in connection with this Agreement or any other agreement shall be materially false, and such falsehood is not cured within 30 days after written notice thereof to the Railroad; or"

(ii) There is hereby added to Article 18, immediately after clause (f) thereof, a clause (g) which shall read as follows:

"(g) the Railroad or any guarantor of the obligations of Railroad hereunder shall cease doing business, become insolvent, commit or suffer to exist an act of bankruptcy or become the subject of any proceeding under the federal Bankruptcy Act;"

9. Article 19 of the CSA shall be deleted in its entirety and the following new Article 19 substituted therefor:

"ARTICLE 19. REMEDIES. At any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 18 hereof), the Vendor may, without further notice, at its sole election, either (1) take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 19 expressly provided, and may remove the same from possession and use of the Railroad or

any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law, or (ii) make written demand upon the Railroad to deliver possession of the Equipment. The Railroad shall, upon receipt of such demand in writing, forthwith deliver possession of all of the Equipment to Vendor and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any unit of Equipment so to return such unit. Each such unit of Equipment returned to Vendor pursuant to this Article 19 shall (i) be in the same operating order, repair and condition as of the date hereof, reasonable wear and tear excepted, (ii) have attached or affixed thereto any additions, parts or replacements which have become an accession thereto as provided in Article 9 hereof, and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any unit of Equipment to Vendor as above required, the Railroad shall at its own cost, expense and risk:

- (a) forthwith and in the usual manner cause such unit of Equipment to be transported to such location as shall reasonably be designated by Vendor and there assembled;
- (b) furnish and arrange for Vendor to store such unit of Equipment on any lines of railroad or premises approved by Vendor including premises of the Railroad until such unit has been sold, leased or otherwise disposed of by Vendor; and

(c) cause such unit of Equipment to be moved to such interchange point or points as shall be designated by Vendor upon any sale, lease or other disposal of such unit of Equipment.

The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided shall be at the expense and risk of the Railroad and are of the essence of this Agreement, and upon application to any court of equity having jurisdiction in the premises Vendor shall be entitled to a decree against the Railroad requiring specific performance of the covenants of the Railroad so to assemble, deliver, store and transport the Equipment. During any storage period, the Railroad will permit Vendor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or any such unit of Equipment to inspect the same. In the event that any unit of Equipment is sold pursuant to the exercise by Vendor of its rights under this Article 19, the Railroad shall pay to Vendor the per diem interchange for any unit of Equipment which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

THE RAILROAD HEREBY WAIVES ANY RIGHT TO PRIOR NOTICE (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED IN THIS AGREEMENT) OR JUDICIAL HEARING IN CONNECTION WITH VENDOR'S TAKING POSSESSION OR THE VENDOR'S DISPOSITION OF ANY OF THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY AND ALL PRIOR NOTICE AND HEARING FOR ANY PREJUDGMENT REMEDY OR REMEDIES AND ANY SUCH RIGHT WHICH THE RAILROAD WOULD OTHERWISE HAVE UNDER THE CONSTITUTION OR ANY STATUTE OF THE UNITED STATES OR OF ANY STATE.

The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 18 hereof), the Vendor (whether before or after retaking possession of the Equipment as hereinbefore in this Article 19 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 23 hereof, and to any other persons to whom the law may require notice, within 30 days after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of

the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 19.

At any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 18 hereof), the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such

sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due, under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at Boston, Massachusetts at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 23 hereof. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Railroad (except to the extent of

surplus money received as hereinafter provided in this Article 19), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. In addition to the powers and remedies specifically set forth in this Agreement, Vendor shall have the rights and remedies of a secured creditor under Article 9 of the Uniform Commercial Code as in effect in the Commonwealth of Massachusetts. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this

Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment."

10. Article 25 of the CSA is hereby amended by substituting for the words "State of North Carolina" in the third line thereof the words "Commonwealth of Massachusetts."

1. Representations and Warranties. Each of NRUC and Pickens represents and warrants as follows:

A. Incorporation, etc. Each of NRUC and Pickens is a corporation duly organized, validly existing and in good standing under the laws of the state of South Carolina, has the requisite corporate power and authority to own its properties and to carry on its business as now being conducted and to enter into, execute and perform its respective obligations under this Amendment Agreement, has duly authorized the execution, delivery and performance of this Amendment Agreement, and is duly qualified as a foreign corporation in each jurisdiction wherein the character of the property owned

or the nature of the activities conducted by each of NRUC or Pickens makes such qualification necessary.

B. Valid Obligation. Each of NRUC and Pickens has taken all necessary corporate proceedings to authorize the execution, delivery and performance of this Amendment Agreement, and said Amendment Agreement constitutes the legal, valid and binding obligation of each, enforceable in accordance with its terms, and the execution, delivery and performance of said Amendment Agreement by each of NRUC and Pickens will not violate any provision of law, any order of any court or other agency of government, or any indenture, agreement or other instrument to which either of NRUC or Pickens is a party, or by or under which either of them or the property of either of them is bound, or be in conflict with, result in a breach of, or constitute (with due notice and/or lapse of time) a default under such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon the property or assets of either NRUC or Pickens.

IN WITNESS WHEREOF the parties have hereunto set their hands and affixed their corporate seal.

GENERAL DISCOUNT CORPORATION

By

Lawrence R. Seder, Pres.
Lawrence R. Seder

Attest:

Charles R. Trumble
Asst Secretary

Attest:

Charles R. Trumble
Asst Secretary

PICKENS RAILROAD COMPANY

By

John A. J. Harwood
V.P.

NATIONAL RAILWAY UTILIZATION CORPORATION

By

John A. J. Harwood
V.P.

ACKNOWLEDGMENTS

Suffolk, ss.

On this 30th day of June, 1976, before me personally appeared Lawrence R. Seder, to me personally known, who, being by me duly sworn, says that he is president of General Discount Corporation and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Lawrence R. Seder acknowledged said instrument was the free act and deed of said corporation.


Notary Public

On this 30th day of June, 1976, before me personally appeared John A. Mariscotti, to me personally known, who, being by me duly sworn, says that he is Vice-President of Pickens Railroad Company, a South Carolina corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said John A. Mariscotti acknowledged said instrument was the free act and deed of said corporation.


Notary Public

ELISA M. LOPEZ, Notary Public
My Commission expires Nov. 22, 1979